

data for 87 measures via this web site and expect that data for the remaining measures will be made available over the coming months. Typically, the BOC applicants process the requested data and make it available within a day. Id. ¶ 192.

Mini-audits are also made available to CLECs throughout the SBC Midwest region. The approved performance remedy plans each allow for “mini-audits,” yet no CLEC has so far requested such an audit. Id. ¶ 195. The BOC applicants are required to absorb the cost of the audit if the result of that audit determines that they materially misreported or misrepresented data. Id.⁵⁰

The BOC applicants believe their data collection, calculation and reporting processes to be highly accurate and reliable. If errors are discovered in the reported results, however, they post “restatements” in accordance with guidelines that are published on the SBC CLEC website. Id. ¶ 197 & n.79. Moreover, should any CLEC have reason to believe that its individual performance results reported by the BOC applicant are incorrect, that CLEC can request a data reconciliation to address the accuracy of that CLEC’s reported performance results. Id.

Finally, the BOC applicants have implemented a number of improvements to their internal controls and to their already extensive documentation of performance measurement procedures throughout the SBC Midwest region. See id. ¶ 200. Some of the more significant control steps include (a) copying and storing both the input and output files for performance data; (b) using numerical control records in the header and trailer of the input and output files to ensure that all records are processed; and (c) processing data more than one time, and cross-checking the results for accuracy. See id. Moreover, many of the exceptions noted in E&Y’s

⁵⁰ See also Ehr IN Aff. ¶ 168; Ehr OH Aff. ¶ 177; Ehr WI Aff. ¶ 172.

audit reflect issues that SBC had already identified and targeted for correction, either by restatement of previously reported results or by prospective changes in procedure. See id.⁵¹

III. SBC SATISFIES ALL REQUIREMENTS OF THE COMPETITIVE CHECKLIST IN EACH OF THE FOUR APPLICANT STATES

The following sections (and the affidavits and other materials supporting them) discuss the BOC applicants' contractual offerings, associated network arrangements, performance data, and other evidence that establish that they satisfy the requirements of the section 271 "competitive checklist" in their respective states. See 47 U.S.C. § 271(c)(2)(B).

A. Checklist Item 1: Interconnection

In satisfaction of Checklist Item 1, the BOC applicants provide interconnection "at any technically feasible point" within their networks that is "at least equal in quality" to the interconnection that they provide themselves, on rates, terms, and conditions that are "just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(2); see Texas Order ¶ 61. CLECs in Illinois, Indiana, Ohio, and Wisconsin thus have access to a basic prerequisite of local exchange competition – the ability to send their customers' calls to, and receive calls from, customers of the incumbent carrier. CLECs are able to connect their networks to those of the BOC applicants by the most efficient means possible, including placement of the CLECs' own equipment in the BOCs' buildings.

To originate and terminate traffic between themselves and CLEC locations, the applicant telephone companies have provisioned approximately 585,00 interconnection trunks in Illinois, 144,000 interconnection trunks in Indiana, 311,000 interconnection trunks in Ohio, and 130,000 interconnection trunks in Wisconsin. See Heritage Affs., Attach. A. To ensure

⁵¹ See also Ehr IN Aff. ¶ 173; Ehr OH Aff. ¶ 182; Ehr WI Aff. ¶ 177.

nondiscrimination, the applicant telephone companies provision these trunks using the same equipment, processes, technical criteria, and service standards that they apply to themselves. See, e.g., Deere IL Aff. ¶ 34 (App. A, Tab 13).⁵² As further discussed below, these and other steps to facilitate interconnection between the BOC applicants and CLECs fully satisfy the requirements of Checklist Item 1. See Texas Order ¶ 65; Kansas/Oklahoma Order ¶ 223.

The BOC applicants' interconnection agreements with other carriers establish three standard methods by which CLECs may connect their networks to those of the applicant telephone companies: fiber-meet interconnection, collocation, and leasing of the BOC's facilities. See Deere IL Aff. ¶ 15. Each of these interconnection arrangements is available at the trunk side or line side of the local switch, the trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and points of access to UNEs. See id. ¶ 22. For the purposes of interconnection to exchange local traffic, a CLEC may choose a single, technically feasible point of interconnection within a LATA. See id. ¶ 27; Texas Order ¶ 78; Kansas/Oklahoma Order ¶ 232. The BOC applicants will provide other technically feasible alternatives through a Special Request Process. See Deere IL Aff. ¶ 15.

1. Interconnection Trunking

Fiber-meet interconnection is available at any mutually agreeable and technically feasible point between a CLEC's premises and a BOC applicant's eligible structure – including, without limitation, a tandem or end office. See Deere IL Aff. ¶ 16. The fiber-meet arrangement may be

⁵² See also Deere IN Aff. ¶ 34 (App. A, Tab 14); Deere OH Aff. ¶ 34 (App. A, Tab 15); Deere WI Aff. ¶ 34 (App. A, Tab 16). Unless otherwise noted, citations in this brief to the Illinois Affidavit of William C. Deere ("Deere IL Aff.") are intended to refer also to the identical paragraphs contained in Mr. Deere's affidavits for Indiana ("Deere IN Aff."), Ohio ("Deere OH Aff.") and Wisconsin ("Deere WI Aff.").

used to provide interoffice trunking for originating and terminating calls between the two networks or for transit of calls to or from a third party via the BOC's tandem switch. See id. ¶ 17; see also id. ¶¶ 18-22 (describing various fiber-meet designs); id. ¶¶ 28-53 (discussing interconnection interoffice trunking arrangements from a CLEC to each of the BOC applicants for traffic originated by the CLEC and from the BOC applicants to a CLEC for traffic terminated over the CLEC's network).

The BOC applicants have implemented, as part of their performance measurement plans, multiple separate measures relating to interconnection trunking. Relevant measures track trunk blockage, the percentage of missed due dates, average completed interval, and timeliness of customer trouble report resolution. In each of the applicant states, the BOCs' performance in providing interconnection trunks has been outstanding for the past three months. See Ehr IL Aff. ¶¶ 26-31.⁵³

2. Collocation

CLECs in each of the applicant states may collocate on the BOC's premises equipment necessary to interconnect with the BOC's network, in order to provide telephone exchange service and exchange access or to access UNEs. See, e.g., Alexander IL Aff. ¶¶ 28-73 (App. A, Tab 1).⁵⁴ CLECs are taking advantage of these opportunities: Approximately 35 CLECs are using 900 collocation arrangements in Illinois Bell's central offices; approximately 15 CLECs

⁵³ See also Ehr IN Aff. ¶¶ 24-30; Ehr OH Aff. ¶¶ 26-32; Ehr WI Aff. ¶¶ 26-31.

⁵⁴ See also Alexander IN Aff. ¶¶ 28-73 (App. A, Tab 2); Alexander OH Aff. ¶¶ 28-73 (App. A, Tab 3); Alexander WI Aff. ¶¶ 28-73 (App. A, Tab 4). Unless otherwise noted, citations in this brief to the Illinois Affidavit of Scott T. Alexander ("Alexander IL Aff.") are intended to refer also to the identical paragraphs contained in Mr. Alexander's affidavits for Indiana ("Alexander IN Aff."), Ohio ("Alexander OH Aff.") and Wisconsin ("Alexander WI Aff.")

are using 240 collocation arrangements in Indiana Bell's central offices; approximately 20 CLECs are using 500 collocation arrangements in Ohio Bell's central offices; and approximately ten CLECs are using 230 collocation arrangements in Wisconsin Bell's central offices. See Heritage Affs., Attach. A. SBC provisions collocation space in full conformity with the criteria established by the FCC in its Advanced Services Collocation Reconsideration Order.⁵⁵

The BOC applicants provide both physical and virtual collocation through interconnection agreements and, where applicable, pursuant to tariff. See Alexander IL Aff. ¶ 29 (citing I.C.C. Tariff No. 20, Part 23, Section 4 (App. M, Tab 1)).⁵⁶ A CLEC may also negotiate different terms and conditions. See id.

Physical collocation of CLEC equipment is available in the BOC applicants' premises wherever technically feasible and space permits. See, e.g., Deere IL Aff. ¶ 24. The BOC applicants make available caged, shared cage, and cageless physical collocation arrangements, all at the option of the CLEC. See, e.g., Alexander IL Aff. ¶¶ 39, 45-49. Adjacent structure collocation is available when all space for physical collocation is legitimately exhausted. Id. ¶ 50. If collocation space in an Eligible Structure subsequently becomes available, the CLEC may, at its option, relocate its equipment into that interior space. Id. The BOC applicants also will make available other technically feasible collocation arrangements. See id. ¶ 52.

⁵⁵ Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 17806 (2000) ("Advanced Services Collocation Reconsideration Order").

⁵⁶ See also Alexander IN Aff. ¶ 29 (citing I.U.R.C. Tariff No. 20, Part 23, Section 4); Alexander OH Aff. ¶ 29; Alexander WI Aff. ¶ 29 (citing P.S.C.W. Tariff No. 20, Part 23, Section 4).

A CLEC obtaining physical collocation is provided access to the BOC applicants'

Interconnector's Collocation Services Handbook for Physical Collocation. See id. ¶ 41.

Collocation installation requirements and other details are provided in Technical Publication TP 76300MP, Installation Requirements, which is available on the Web. Id.

If the BOC applicants must deny a CLEC's request for physical collocation because space is not available, they notify the CLEC by letter within 10 days. Id. ¶ 57. The CLEC may tour the structure in accordance with 47 C.F.R. § 51.321(f). Id. ¶ 58. Each of the BOC applicants maintains a publicly available document on the Internet indicating when physical collocation space is no longer available in its central offices, pursuant to 47 C.F.R. § 51.321(h). See id. ¶ 56.

The standards that the BOC applicants apply for space reservation are nondiscriminatory and apply equally to their affiliates. See id. ¶ 60. Each of the applicant telephone companies has adopted policies that conserve collocation space and maximize opportunities for carriers to enter or to expand their presence in the local market, including removal of obsolete, unused equipment upon reasonable request by a collocater or upon order of the state commission. See id. ¶ 62. They each also conserve caged collocation space by allowing CLECs to purchase space in increments as small as the amount of space needed to house and maintain one rack or bay of equipment. Id. ¶ 45.

Security measures for collocators in the BOC applicants' central offices reasonably protect the network and equipment from harm. Many of these security measures are specifically permitted by the Commission, and any additional measures are no more stringent than those followed by the BOC applicants' own personnel or contractors. Id. ¶ 63. CLEC personnel need not undergo any security training more stringent or intensive than the training undergone by the

BOC's personnel, nor are they required to obtain that training from the BOC applicant itself. Id. ¶ 64. Consistent with the Advanced Services Collocation Order,⁵⁷ any security partitions that the BOC applicant deploys around its own equipment will not interfere with a CLEC's access to its collocated equipment and will not be the basis for a claim that collocation space is exhausted. See Alexander IL Aff. ¶ 66. CLECs have access to their physically collocated equipment 24 hours a day, seven days a week, without a security escort, as well as reasonable access to restrooms and parking. Id. ¶ 67.

CLECs also have reasonable access to their physical collocation space during construction. Id. ¶ 35. The BOC applicants do not use information obtained from CLECs in the course of implementing security arrangements for marketing or other competitive purposes. See id. ¶ 63. The applicant telephone companies require collocated CLEC equipment to meet Level 1 safety standards (which are similar to the generic Telcordia Network Equipment and Building Specifications ("NEBS") Level 1 safety standards) as set forth in the Technical Publication 76200, unless it is established in writing that the equipment has been in any incumbent LEC's premises without any known or documented safety problems since before January 1, 1998. Id. ¶ 68. The applicant telephone companies do not refuse collocation of equipment that fails to meet NEBS or other reliability standards. Id. They also have modified their internal procedures to ensure that, if they deny collocation on the ground that a CLEC's equipment fails to meet applicable safety standards, the FCC-required affidavit contains all information required by 47 C.F.R. § 51.323(c). See id.

⁵⁷ First Report and Order and Further Notice of Proposed Rulemaking, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 14 FCC Rcd 4761, ¶¶ 42, 48 (1999) ("Advanced Services Collocation Order"), vacated in part, GTE Serv. Corp. v. FCC, 205 F.3d 416 (D.C. Cir. 2000).

The BOC applicants provision collocation space in conformance with Commission requirements as set forth in the Advanced Services Collocation Order and the Advanced Services Collocation Reconsideration Order, as modified by the Advanced Services Collocation Waiver Order.⁵⁸ See, e.g., Alexander IL Aff. ¶ 31. Their policy is to respond to each collocation application within 10 days with a notification of whether space is available. See id. ¶ 33. Moreover, currently effective interconnection agreements (and, where applicable, collocation tariffs) provide specific collocation arrangement construction intervals pursuant to which CLECs can obtain timely collocation. See id. ¶ 34.

Performance data from March through May 2003 confirm that each of the BOC applicants is providing outstanding and nondiscriminatory service with respect to collocation. See Ehr IL Aff. ¶¶ 32-33.⁵⁹

Virtual collocation is available to CLECs regardless of the availability of physical collocation. See, e.g., Alexander IL Aff. ¶ 69. The BOC applicants use the same engineering practices for virtually collocated equipment as they do for their own similar equipment in determining equipment placement and engineering routes for all connecting cabling. See id. ¶ 70. They will also maintain and repair virtually collocated equipment, using the same standards that they use for maintaining and repairing their own equipment. Id. ¶ 73.

Bona Fide Request Process. In addition to these standard offerings, CLECs may request technically feasible, custom-tailored interconnection arrangements through a bona fide request

⁵⁸ Memorandum Opinion and Order, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 16 FCC Rcd 3748 (2000) ("Advanced Services Collocation Waiver Order"). That order granted a conditional waiver from some of the requirements of 47 C.F.R. § 51.323(l).

⁵⁹ See also Ehr IN Aff. ¶¶ 31-32; Ehr OH Aff. ¶¶ 33-34; Ehr WI Aff. ¶¶ 32-33.

("BFR") process. See, e.g., Deere IL Aff. ¶¶ 71-75. This process allows CLECs to request modifications to existing interconnection arrangements as well as additional arrangements. The BOC applicants will analyze the technical feasibility of the request and prepare a preliminary report for the requesting carrier within 30 days, except under extraordinary circumstances. Id. ¶ 75. If the request is technically feasible and the CLEC authorizes further development, the BOC applicant will negotiate a schedule for arriving at price and implementation terms (which generally will not extend beyond 90 days from the BOC's receipt of the request). Id. ¶ 74.

Pricing for Interconnection. Each of the BOC applicants provides interconnection at rates established by its state commission in accordance with section 252(d)(1). See Wardin Aff. ¶¶ 13, 17 (Illinois) (App. A, Tab 41); Butler Aff. ¶ 74 (Indiana); McKenzie Aff. ¶ 65 (Ohio); VanderSanden Aff. ¶ 66. Collocation prices were also set at TELRIC rates established by the state commissions. See Wardin Aff. ¶ 56; Butler Aff. ¶ 102; McKenzie Aff. ¶ 101; VanderSanden Aff. ¶ 95. Collocation site preparation charges are pro-rated and allocated based on the percentage of the total space obtained by each CLEC, so that the first collocater in a premises is not responsible for the entire cost of site preparation. See, e.g., Alexander IL Aff. ¶¶ 47-49.

B. Checklist Item 2: Access to UNEs

SBC satisfies Checklist Item 2 by providing "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(3); see id. §§ 252(d)(1), 271(c)(2)(B)(ii). This offer of leased access to individual components of the separate telephone companies' local exchange networks enables CLECs to serve their local customers without duplicating SBC's multi-billion dollar investment in local network infrastructure.

1. Access to UNEs Generally

The applicant telephone companies have each entered into numerous interconnection agreements that require them to provide access to a comprehensive set of UNEs at rates, terms, and conditions that comply with sections 251 and 252 of the Act and the terms of the UNE Remand Order.⁶⁰ See, e.g., Alexander IL Aff. ¶ 75; Easton Agreement, App. UNE §§ 6-16 (App. B-IL, Tab 5).

2. UNE Combinations

SBC is in full compliance with the Commission's UNE combinations rules, including 47 C.F.R. § 51.315(c)-(f), as upheld by the Supreme Court in Verizon Communications Inc. v. FCC, 535 U.S. 467 (2002). The applicant telephone companies do not separate the specific unbundled network elements that are currently physically combined in its network unless requested to do so by the CLEC. See, e.g., Alexander IL Aff. ¶ 81. Moreover, when requested to do so, the applicant telephone companies will combine particular UNEs that are not already combined, including different UNE-P combinations and "enhanced extended links" (also known as "enhanced extended loops" or "EELs"). Id. ¶ 82 (specifically including twelve different UNE-P combinations and eight EELs in Illinois).⁶¹ Requests for UNE combinations other than those

⁶⁰ Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 3696 (1999) ("UNE Remand Order"), petitions for review granted, United States Telecom Ass'n v. FCC, 290 F.3d 415 (D.C. Cir. 2002), cert. denied, 123 S. Ct. 1571 (2003).

⁶¹ See also Alexander IN Aff. ¶ 82 (specifically including seven different UNE-P combinations and six EELS); Alexander OH Aff. ¶ 82 (specifically including ten different UNE-P combinations and eight EELS); Alexander WI Aff. ¶ 82 (specifically including ten different UNE-P combinations and eight EELS).

listed can be made under the BFR process or a streamlined BFR-OC process, where applicable.

Id. ¶ 83.

In Illinois, the ICC established a docket to review and implement Illinois Bell's obligations under Section 13-801 of the Illinois Public Utilities Act, including Illinois Bell's obligations to provide UNE combinations to CLECs. See Alexander IL Aff. ¶ 84. Both in that proceeding and in the ICC's section 271 review, the parties thoroughly considered and litigated the scope of Illinois Bell's obligations to provide UNE combinations. Pursuant to its obligations under Illinois state law, Illinois Bell filed an interim compliance tariff (which became effective in September 2001) offering the UNE combinations previously contained in the proposed I2A amendment. Id. ¶ 84 & n.40. Illinois Bell subsequently filed permanent compliance tariffs for UNE combinations on July 11, 2002, which became effective on July 12, 2002. Id. CLECs may purchase UNE combinations directly from those UNE combinations tariffs when the CLEC's interconnection agreement became effective prior to June 30, 2001, and a CLEC may also negotiate other provisions for UNE combinations, or amend its interconnection agreement to incorporate, by reference, the provisions of the applicable tariffs. Id. ¶ 85 & n.44; see also Wardin Aff. ¶¶ 42-47.

In Indiana, the parties litigated the scope of Indiana Bell's obligations to provide UNE combinations in multiple proceedings. See Alexander IN Aff. ¶ 84. As required by the IURC, Indiana Bell has filed effective tariffs that comport with the IURC's requirements, including the requirement to include in its list of tariffed UNE combinations those UNE combinations required by the IURC in the AT&T Arbitration. Id.; see also Butler Aff. ¶ 93.

In Ohio, Ohio Bell's obligations to provide UNE combinations was likewise thoroughly considered and litigated. As a result of those proceedings, Ohio Bell has offered a standard

interconnection agreement amendment titled "Ohio Existing UNE-P and New UNE Combinations Amendment." In addition, those provisions have been included in interconnection agreements, including the AT&T Agreement. See Alexander OH Aff. ¶ 82 n.39; see also McKenzie Aff. ¶¶ 88-94.

In Wisconsin, the subject of Wisconsin Bell's obligations to provide UNE combinations was thoroughly considered and litigated by interested CLECs, Wisconsin Bell, and the PSCW Staff. See Alexander WI Aff. ¶ 84. Wisconsin Bell has filed effective tariffs that comport with the PSCW's requirements, reflecting commitments that Wisconsin Bell has made in its Compliance Plan in Docket No. 6720-TI-170. Id. ¶ 84 & n.35. Wisconsin Bell also offers an interconnection agreement amendment that incorporates, by reference, the provisions of its UNE combinations tariffs into the CLEC's effective interconnection agreement. Id. ¶ 84 & n.36; VanderSanden Aff. ¶¶ 85-87.

To allow CLECs to combine UNEs themselves as required by 47 C.F.R. § 51.315(a), the applicant telephone companies make physical collocation arrangements available. See, e.g., Alexander IL Aff. ¶¶ 39-53. In addition, CLECs may also use their own cross-connect arrangements to combine UNEs in collocation or non-collocation UNE connection arrangements. Facilities-based CLECs may combine UNEs with their own equipment, and all CLECs may combine UNEs provided by the telephone company. See Deere IL Aff. ¶ 9; Alexander IL Aff. ¶ 80.

The various collocation options and other methods of access to UNEs, as well as the telephone companies' offers to combine certain UNEs for CLECs, provide multiple methods for CLECs to obtain UNEs without owning or controlling any other local exchange facilities. Facilities-based CLECs can use these same methods to combine the applicant telephone

companies' network elements with their own facilities. In addition, CLECs are not restricted to these methods of combining UNEs, but may request other technically feasible methods of access that are consistent with the provisions of the 1996 Act and other governing statutes and decisions. See Alexander IL Aff. ¶¶ 79-80; Deere IL Aff. ¶¶ 71-75.

3. Line Sharing

SBC is in compliance with this Commission's Line Sharing Order.⁶² See Chapman Aff. ¶ 57 (App. A, Tab 10); see also infra Part III.D.1.b. CLECs may obtain the terms and conditions for DSL-capable loops, including terms for line sharing, through the multi-state generic interconnection/resale agreement, and through the DSL Appendices of the Budget Phone and Easton Agreements. See Chapman Aff. ¶ 4 n.2.

Each of the state commissions has established TELRIC rates for the high-frequency portion of the loop as well as for the other rate elements associated with line sharing (including cross-connects and optional ILEC-owned splitters). See Wardin Aff. ¶¶ 32-34; Butler Aff. ¶¶ 80-81; McKenzie Aff. ¶¶ 79-80; VanderSanden Aff. ¶¶ 75-76 (the PSCW deferred the setting of certain rate elements associated with line sharing to individual arbitrations and negotiations).

4. Intellectual Property

The applicant telephone companies will make their best efforts to obtain any associated intellectual property rights that are necessary for the requesting carrier to use UNEs or to ensure

⁶² Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 14 FCC Rcd 20912 (1999) ("Line Sharing Order"), vacated and remanded, United States Telecom Ass'n v. FCC, 290 F.3d 415 (D.C. Cir. 2002), cert. denied, 123 S. Ct. 1571 (2003).

that none is required in compliance with the Commission's Intellectual Property Order.⁶³ See Easton Agreement, General Terms and Conditions § 14.5.1. SBC is not aware of any action in which a third-party intellectual-property owner has asserted a claim or a request for payment for a CLEC's use of any of the BOC applicants' UNEs. See Alexander IL Aff. ¶ 86.⁶⁴

5. Pricing

The state commissions in Illinois, Indiana, Ohio, and Wisconsin have each established TELRIC-compliant rates after holding extensive proceedings that were fully open to CLEC participation. The state commissions fully justified both the ultimate rates they established and the subsidiary decisions they reached in decisions that uniformly demonstrate their "commitment to TELRIC-based rates." New York Order ¶ 238; see Massachusetts Order ¶ 27. The result is a full set of UNE rates in each state that complies with the 1996 Act and this Commission's rules. See Wardin Aff. ¶¶ 13-21 (Illinois); Butler Aff. ¶¶ 78-106 (Indiana); McKenzie Aff. ¶¶ 75-100 (Ohio); VanderSanden Aff. ¶¶ 66-98 (Wisconsin).

As in prior cases, the determinations of these expert agencies on these inherently fact-intensive questions warrant respectful and highly deferential review. The Commission should "place great weight" on the state commissions' determinations that SBC's rates are TELRIC-compliant. See New York Order ¶ 238. As the Commission has explained, it does not engage in de novo review of rates in section 271 proceedings. Moreover, "it is both impracticable and inappropriate for [this Commission] to make many of the fact-specific findings the parties seek

⁶³ Memorandum Opinion and Order, Petition of MCI for Declaratory Ruling That New Entrants Need Not Obtain Separate License or Right-to-Use Agreements Before Purchasing Unbundled Elements, 15 FCC Rcd 13896 (2000) ("Intellectual Property Order").

⁶⁴ See also Alexander IN Aff. ¶ 85; Alexander OH Aff. ¶ 85; Alexander WI Aff. ¶ 85.

in this section 271 review, when many of the [state commissions'] fact-specific findings have not been challenged below." Vermont Order ¶ 20. Rather, this Commission's proper role is quite limited: "we will reject the application only if basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce." New York Order ¶ 244 (emphases added); see also Massachusetts Order ¶ 20; Kansas/Oklahoma Order ¶ 59; Pennsylvania Order ¶ 55. Those extreme circumstances are not remotely present here. Indeed, the rates established in the applicant states are among the very lowest in the country. While the results reached in the different states here are not precisely the same, they all fall well within "the range of what a reasonable application of TELRIC would produce." Georgia/Louisiana Order ¶ 23.

a. Illinois

The ICC established TELRIC-based rates for Illinois Bell's UNE offerings in multiple rate proceedings. See Wardin Aff. ¶¶ 13-21. The prices established by the ICC fully comply with the requirements of the Act. Id. ¶ 7. The costs, and hence rates, for most UNEs and interconnection were exhaustively reviewed and set in Docket Nos. 96-0486/96-0569.⁶⁵ Additional pricing and rate structure changes were addressed in separate dockets in a manner consistent with the cost directives prescribed by the ICC. Id. ¶ 8. These subsequent proceedings

⁶⁵ See Second Interim Order, Investigation into Forward Looking Cost Studies and Rates of Ameritech Illinois for Interconnection, Network Elements, Transport and Termination of Traffic and Illinois Bell Telephone Company, Proposed Rates, Terms and Conditions for Unbundled Network Elements, Docket Nos. 96-0486/0569, Consol. (ICC Feb. 17, 1998) ("ICC TELRIC Order") (App. M, Tab 19).

included Docket No. 98-0396, addressing ICC TELRIC Order compliance,⁶⁶ Docket No. 99-0593, addressing special construction charges,⁶⁷ Docket No. 99-0615, addressing collocation,⁶⁸ Docket No. 00-0393, addressing line sharing,⁶⁹ and Docket No. 00-0700, addressing shared transport.⁷⁰

⁶⁶ See Order, Investigation into the Compliance of Illinois Bell Telephone Company with the Order in Docket 96-0486/0569 Consolidated Regarding the Filing of Tariffs and the Accompanying Cost Studies for Interconnection, Unbundled Network Elements and Local Transport and Termination and Regarding End to End Bundling Issues, Docket No. 98-0396 (ICC Oct. 16, 2001) (App. M, Tab 65); Order on Reopening, Investigation into the Compliance of Illinois Bell Telephone Company with the Order in Docket 96-0486/0569 Consolidated Regarding the Filing of Tariffs and the Accompanying Cost Studies for Interconnection, Unbundled Network Elements and Local Transport and Termination and Regarding End to End Bundling Issues, Docket No. 98-0396 (ICC Apr. 30, 2002) (App. M, Tab 76).

⁶⁷ Order, Illinois Commerce Commission, on Its Own Motion v. Illinois Bell Telephone Company: Investigation of Special Construction Charges, Docket No. 99-0593 (ICC Aug. 15, 2000) (App. M, Tab 38).

⁶⁸ Order, Illinois Bell Telephone Company, Proposed Expansion of Collocation Tariffs, Docket No. 99-0615 (ICC Aug. 15, 2000) (App. M, Tab 37); Order on Rehearing, Illinois Bell Telephone Company, Proposed Expansion of Collocation Tariffs, Docket No. 99-0615 (ICC Jan. 31, 2001) (App. M, Tab 46).

⁶⁹ Order, Illinois Bell Telephone Company, Proposed Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service (Tariffs filed April 21, 2000), Docket No. 00-0393 (ICC Mar. 14, 2001) (App. M, Tab 49); Amending Order, Illinois Bell Telephone Company, Proposed Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service (Tariffs filed Apr. 21, 2000), Docket No. 00-0393 (ICC May 1, 2001) (App. M, Tab 55); Order on Rehearing, Illinois Bell Telephone Company, Proposed Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service (Tariffs filed April 21, 2000), Docket No. 00-0393 (ICC Sept. 26, 2001) (App. M, Tab 62); Amending Order, Illinois Bell Telephone Company, Proposed Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service (Tariffs filed April 21, 2000), Docket No. 00-0393 (ICC Oct. 16, 2001) (App. M, Tab 64); Order on Second Rehearing, Illinois Bell Telephone Company, Proposed Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service (Tariffs filed April 21, 2000), Docket No. 00-0393 (ICC Mar. 28, 2002) (App. M, Tab 72).

⁷⁰ Order, Illinois Commerce Commission, on Its Own Motion v. Illinois Bell Telephone Company: Investigation into Tariff Providing Unbundled Local Switching with Shared Transport, Docket No. 00-0700 (ICC July 10, 2002) (App. D-IL, Tab 17).

In addition to these specific dockets, the ICC reviewed Illinois Bell's prices and policies during the state 271 proceeding (Docket No. 01-0662), including the application of non-recurring charges to new UNE combinations. See Wardin Aff. ¶ 9. The ICC concluded that Illinois Bell's rates for interconnection and collocation were based on TELRIC costs and were nondiscriminatory, consistent with section 252(d)(1).⁷¹ The ICC reviewed the long record of TELRIC pricing dockets, demonstrating its commitment to this Commission's pricing rules for UNEs. The ICC noted that certain pricing issues raised in Docket No. 01-0662 had been resolved by agreement with ICC Staff and that those resolutions were reasonable. Id. ¶ 10. The ICC found that Illinois Bell's proposed line connection charges for UNE sub-loops and its dark fiber mileage rates were reasonable and compliant with the FCC's standards for interim rates.⁷²

The rates established in the various pricing dockets are reflected in Illinois Bell's UNE and interconnection tariffs.⁷³ Id. ¶ 21. Illinois Bell also offers these rates in existing interconnection agreements based on the language of those agreements. See id., Attach. A (pricing schedules from the Easton Agreement). Any CLEC with an existing interconnection agreement may also take service under the terms, conditions, and rate applications contained in Illinois Bell's combinations tariff.⁷⁴

⁷¹ See ICC Final Order ¶¶ 333-334, 362-364.

⁷² Id. ¶¶ 887-890.

⁷³ Illinois Bell has had UNE and interconnection tariffs on file at the ICC since April 1998 in compliance with the ICC TELRIC Order.

⁷⁴ See I.C.C. Tariff No. 20, Part 19, Sections 15 & 20.

Finally, on May 9, 2003, the Illinois General Assembly passed and the Governor signed into law Illinois Public Act 93-0005,⁷⁵ which established substantive standards for the ICC to apply when determining the fill factor and depreciation inputs used to develop TELRIC rates for UNE loops.⁷⁶ Specifically, the Legislature found that “existing actual total usage” of loop facilities “is the most reasonable projection” of forward-looking usage, so it accordingly directed the ICC to “employ current actual total usage on a going forward basis in establishing cost based rates.”⁷⁷ With respect to depreciation, the Legislature directed the ICC to use economic lives as reflected in Illinois Bell’s books of accounts as reported under SEC regulations.⁷⁸

Several parties filed a complaint in federal district court challenging the legislation.⁷⁹ On June 9, 2003, the ICC established new TELRIC UNE loop rates in compliance with the legislation.⁸⁰ But, on that same day, the federal district court enjoined the ICC and Illinois Bell

⁷⁵ 220 Ill. Comp. Stat. 5/13-408 & 13-409 (2003).

⁷⁶ The standards the Legislature prescribed are fully consistent with the federal Act and the Commission’s TELRIC pricing rules.

⁷⁷ The Legislature concluded that Illinois Bell’s existing fill levels – which Illinois Bell had developed after more than a decade of operating under price-cap regulation specifically designed to encourage it to engineer its network in an efficient manner – are forward-looking and efficient. Id.

⁷⁸ As the Supreme Court has recognized, this Commission’s “economic” standard for depreciation “recognizes no particular useful life as the basis for calculating depreciation costs” and instead “leave[s] plenty of room for differences in the appropriate depreciation rates.” Verizon Communications, Inc. v. FCC, 535 U.S. 467, 519, 521 (2002). States have adopted several different standards in this area, such as the depreciation lives used in other regulatory contexts or those used for financial reports. See Kansas/Oklahoma Order ¶ 76.

⁷⁹ Voices for Choices v. Illinois Bell Tel. Co., No. 03 C 3290 (N.D. Ill.).

⁸⁰ See Order, Illinois Bell Telephone Company, Petition to Determine Adjustments to UNE Loop Rates Pursuant to Section 13-408 of the Illinois Public Utilities Act, Docket No. 03-0323 (ICC June 9, 2003) (App. M, Tab 175).

from implementing the legislation. The court entered Final Judgment granting declaratory and permanent injunctive relief on July 2, 2003.⁸¹ As a result, the rates in effect prior to the legislation have remained in place, are still in effect today, and are the ones on which Illinois Bell is relying in this Joint Application. See Wardin Aff. ¶ 27.⁸²

For the foregoing reasons, Illinois Bell's UNE rates fully comply with the Commission's pricing regulations and with 47 U.S.C. § 252(d)(1).

b. Indiana

The UNE rates adopted in Indiana are the result of multiple proceedings over many years. See Butler Aff. ¶¶ 61-74. Indiana Bell's wholesale prices were established by the IURC and are based on either Indiana-specific TELRIC costs (proposed by Indiana Bell as adjusted by the IURC) or proposals submitted by CLECs that were ordered for use in Indiana by the IURC. See Makarewicz Aff. ¶¶ 10-25 (App. A, Tab 31).

The IURC established a generic proceeding to consider Indiana Bell's wholesale rates. See Butler Aff. ¶ 61. Numerous parties participated from the beginning, and the IURC established the generic cost inputs (e.g., cost of capital, economic lives, and plant utilization) in June 1998. See Makarewicz Aff. ¶ 10.⁸³ Indiana Bell filed amended cost studies in compliance

⁸¹ Voices for Choices v. Illinois Bell Tel. Co., No. 03 C 3290, 2003 U.S. Dist. LEXIS 9548 (N.D. Ill. June 9, 2003) (Kocoras, J.), appeals pending, Nos. 03-2735 & 03-2766 (consolidated) (7th Cir.).

⁸² "We decide the merits of [the BOC's] 271 application based on its present rates, and it would be arbitrary and inappropriate for the Commission to consider other rates here that have been proposed in another proceeding." Georgia/Louisiana Order ¶ 97.

⁸³ See IURC Final Order, Commission Investigation and Generic Proceeding on Ameritech Indiana's Rates for Interconnection, Service, Unbundled Elements, and Transport and Termination Under the Telecommunications Act of 1996 and Related Indiana Statutes, Cause No. 40611 (IURC June 30, 1998) (App. D-IN, Tab 2).

with the requirements of that order, and these inputs underlie all prices determined in the docket.

Id. ¶ 14.

Indiana Bell supplemented the original studies to comply with changes in federal law, including studies for sub-loops and DS3 loops, the HFPL UNE, xDSL loop conditioning, and loop qualification. See Butler Aff. ¶ 69. The IURC established the TELRIC costs for the Shared Transport UNE (ULS-ST), which Indiana Bell was required to introduce as a result of the SBC/Ameritech Merger order. Id. ¶ 70.

The IURC approved TELRIC costs for the branding of OS and DA calls. Id. ¶ 71. In addition, the IURC resolved issues surrounding the application of non-recurring charges for certain UNE combinations, setting a non-recurring migration charge for UNE-P migrations in March 2002. Id. ¶ 72. At the same time, the IURC set out the appropriate non-recurring charges for other conversions, and these charges are reflected in Indiana Bell's tariff. Id. ¶ 73.

Indiana Bell has incorporated the rates that the IURC ordered into effect into its UNE and interconnection tariffs, and they are available for all new interconnection agreements. Id. ¶ 74 & Attach. B. Moreover, these rates are made available for existing interconnection agreements where the parties provided for the incorporation of tariffed rates. Id. (discussing AT&T Agreement). In order to facilitate its review of Indiana Bell's section 271 application, the IURC ordered Indiana Bell to provide a matrix detailing the prices on which it is relying. See id. Indiana Bell will file this information with the IURC on July 18, 2003.

Indiana Bell's UNE rates fully comply with the Commission's pricing regulations and with 47 U.S.C. § 252(d)(1).

c. Ohio

Prior to the release of this Commission's Local Competition Order,⁸⁴ Ohio Bell had established wholesale prices in individual arbitration proceedings. See McKenzie Aff. ¶ 58. Less than a month after the release of the Local Competition Order, the PUCO opened a proceeding to review Ohio Bell's economic costs for interconnection, UNEs, and reciprocal compensation.⁸⁵ Many CLECs intervened, and the parties filed cost studies and testimony and participated in hearings. The PUCO issued an order on June 19, 1997, establishing the methodology and inputs to be used and requiring Ohio Bell to resubmit its cost studies in light of the order.⁸⁶ After additional studies were filed, the PUCO Staff filed a letter affirming Ohio Bell's compliance with the PUCO's orders.⁸⁷

The PUCO exhaustively reviewed the costs and rates for interconnection and most of Ohio Bell's UNEs in Case No. 96-922-TP-UNC. See McKenzie Aff. ¶ 65; Currie Aff. ¶¶ 36-46 (App. A, Tab 12). In addition, the PUCO reviewed Ohio Bell's prices during a related tariff

⁸⁴ First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996) ("Local Competition Order") (subsequent history omitted).

⁸⁵ See Memorandum, Review of Ameritech Ohio's Economic Costs of Interconnection, Unbundled Network Elements and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic, Case No. 96-922-TP-UNC (PUCO Sept. 3, 1996) (App. D-OH, Tab 1).

⁸⁶ See Opinion and Order, Review of Ameritech Ohio's Economic Costs of Interconnection, Unbundled Network Elements and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic, Case No. 96-922-TP-UNC (PUCO June 19, 1997) (App. D-OH, Tab 60).

⁸⁷ See Letter, Review of Ameritech Ohio's Economic Costs of Interconnection, Unbundled Network Elements and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic, Case No. 96-922-TP-UNC (PUCO filed May 27, 1999) ("May 27, 1999 Letter") (App. D-OH, Tab 100).

proceeding, PUCO Case No. 00-1368-TP-ATA, and as part of the state 271 proceeding (Case No. 00-942-TP-COI), including the application of non-recurring charges to new UNE combinations. See McKenzie Aff. ¶ 61.⁸⁸

In its Final Report and Evaluation, the PUCO found that, “for the purposes of [its] Section 271 review, SBC Ohio’s approved TELRIC-based rates are reasonable and consistent with the FCC’s and the PUCO’s TELRIC-based pricing methodology.”⁸⁹ The rates adopted in Ohio are the result of a long, inclusive, and rigorous multi-phase, multi-proceeding process. The PUCO established Ohio Bell’s wholesale prices based either on Ohio-specific TELRIC costs (proposed by Ohio Bell as adjusted by the PUCO) or on proposals submitted by CLECs that were ordered for use in Ohio by the PUCO (e.g., non-recurring charge for establishing new residential UNE-P combinations). See McKenzie Aff. ¶ 63. The PUCO determined that Ohio Bell’s rates for interconnection and collocation were based on TELRIC cost and nondiscriminatory, consistent with the Act.⁹⁰ The PUCO has yet to rule on a few cost studies, so certain rates – e.g., DS3 loops, sub-loops, and dark fiber – remain interim. See McKenzie Aff. ¶ 67. The PUCO has approved these interim rates, “subject to true-up upon finalization of PUCO-approved TELRIC-based rates.”⁹¹

⁸⁸ Ohio Bell has submitted several updated TELRIC studies for PUCO review and approval in Case No. 02-1280-TP-UNC. The PUCO has not yet set the procedural schedule, and Ohio Bell does not expect any changes to the rates during the period of this Commission’s review of this Joint Application. See McKenzie Aff. ¶ 61 n.61.

⁸⁹ PUCO Final Report and Evaluation at 134.

⁹⁰ Id. at 133-37.

⁹¹ Id. at 136.

The list attached as Appendix B to the PUCO Final Report and Evaluation reflects the rates ordered into effect when the cost studies were first approved. See McKenzie Aff. ¶ 64. Ohio Bell has since reduced the majority of those rates. Id. The PUCO-approved rates are available for all new interconnection agreements. See McKenzie Aff., Attach. B (pricing schedules from the AT&T Agreement). In addition, Ohio Bell makes available its generic Ohio UNE Amendment and price list to any requesting CLEC.

For the foregoing reasons, Ohio Bell's UNE rates fully comply with the Commission's pricing regulations and with 47 U.S.C. § 252(d)(1).

d. Wisconsin

The PSCW established the costs that resulted in TELRIC-based rates for required UNEs and interconnection in Docket No. 6720-TI-161. See VanderSanden Aff. ¶ 66. Numerous parties participated from the beginning of the proceeding. In March 2002, the PSCW established the methodology to be followed by Wisconsin Bell in developing its TELRIC-compliant rates and established several cost inputs (including the cost of capital, economic lives, and plant utilization, as well as others). See B. Smith WI Aff. ¶ 18 (App. A, Tab 36).⁹² The PSCW ordered Wisconsin Bell to file amended cost studies and compliant tariffs. See VanderSanden Aff. ¶ 66.

The PSCW recently concluded its TELRIC docket, issuing its UNE Compliance Order on July 9, 2003.⁹³ In this order, the PSCW attached a list of UNEs with accompanying prices,

⁹² Final Decision, Investigation into Ameritech Wisconsin's Unbundled Network Elements, Docket No. 6720-TI-161 (PSCW Mar. 22, 2002) (App. D-WI, Tab 38).

⁹³ UNE Compliance Order, Investigation into SBC Wisconsin's Unbundled Network Elements, Docket No. 6720-TI-161 (PSCW July 8, 2003) (App. D-WI, Tab 65).

stating that this list reflects the resulting rates from the cost study methods the Commission found to be TELRIC compliant back in March 2002. See id., Attach. B. The rates attached to the UNE Compliance Order reflect numerous revisions to the rates originally proposed by Wisconsin Bell, incorporating various adjustments proposed by the CLECs and PSCW staff. See B. Smith WI Aff. ¶ 19.

The TELRIC-compliant rates are available to CLECs negotiating new interconnection agreements. See VanderSanden Aff. ¶ 68. Wisconsin Bell has amended its agreements with both Time Warner and New Edge Networks, Inc., to incorporate the rates ordered into effect on July 9, 2003, and the PSCW approved each of these amendments on July 14, 2003.⁹⁴ In addition, a generic Wisconsin Bell Pricing Schedule Amendment will be made available to requesting CLECs that wish to amend their existing agreements. See VanderSanden Aff. ¶ 68.

For the foregoing reasons, Wisconsin Bell's UNE rates fully comply with the Commission's pricing regulations and with 47 U.S.C. § 252(d)(1).

6. Nondiscriminatory Access to OSS

In this Joint Application, the BOC applicants demonstrate that SBC Midwest has developed electronic and manual interfaces that provide competing carriers operating in Illinois, Indiana, Ohio, and Wisconsin nondiscriminatory access to all of the OSS functions identified in the Commission's orders. See generally Cottrell/Lawson Joint Aff. (App. A, Tab 11) (access to

⁹⁴ See Order Approving Interconnection Agreement, Application for Approval of the Fifth Amendment to the Interconnection Agreement Between New Edge Networks, Inc., and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), Docket No. 05-TI-822 (PSCW July 14, 2003) (App. M, Tab 200); Order Approving Interconnection Agreement, Application for Approval of the Fourth Amendment to the Interconnection Agreement Between Time Warner Telecom of Wisconsin, L.P., and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), Docket No. 05-TI-823 (PSCW July 14, 2003) (App. M, Tab 199).

OSS); Brown Aff. (App. A, Tab 5) (LSC and LOC); Ehr IL Aff.; Ehr IN Aff.; Ehr OH Aff.; Ehr WI Aff. (performance in Illinois, Indiana, Ohio, and Wisconsin); Brown/Cottrell/Flynn Joint Aff. (App. A, Tab 6) (billing); Muhs Aff. (App. A, Tab 33) (provisioning, maintenance, and repair); see also Georgia/Louisiana Order ¶ 102; Kansas/Oklahoma Order ¶¶ 104-105; New York Order ¶¶ 88, 90. These systems are in place, fully operational, handling commercial volumes, and satisfy the requirements of the Act in all respects. Indeed, that conclusion is supported by BearingPoint's comprehensive and independent third-party tests in each of the four states. Significantly, BearingPoint conducted four separate tests – each of which the applicant BOCs passed with flying colors. See Cottrell/Lawson Joint Aff. ¶ 7 & Attachs. A-D. That conclusion is also supported by the state commissions of Illinois, Indiana, Ohio, and Wisconsin, all of which conducted extensive, open proceedings as to SBC Midwest's OSS compliance with checklist requirements.⁹⁵ See Cottrell/Lawson Joint Aff. ¶ 10.

Commercial Usage. This Commission has repeatedly found that the most probative evidence that a BOC's OSS are operationally ready is actual commercial usage. See Georgia/Louisiana Order App. D, ¶ 31; Arkansas/Missouri Order App. D, ¶ 31; Kansas/Oklahoma Order ¶ 105; New York Order ¶ 89. There is no doubt that the BOC applicants' OSS are handling commercial volumes. See Cottrell/Lawson Joint Aff. ¶¶ 12-17.

⁹⁵ See, e.g., ICC Final Order ¶ 1370 (finding that SBC Illinois' application – including the strong evidence of commercial usage, BearingPoint's comprehensive third-party test, as well as the compliance plans filed by SBC Illinois – “clearly would support a favorable recommendation to the FCC”); PSCW Phase II Final Order at 18 (concluding that Wisconsin Bell provided the PSCW with a “quantum and quality of evidence’ sufficient to reasonably conclude that this record demonstrates SBC is [in] threshold compliance with § 251(c)(3), unbundled access for purposes of § 271”); PUCO Final Report and Evaluation, App. A at 19 (“[F]or the purposes of Section 271 relief, SBC Ohio has satisfied all OSS-related checklist requirements.”); IURC Compliance Order at 12 (declaring support of SBC Indiana's application to the FCC pending resolution of a few areas of concern).